STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission,	)	
On Its Own Motion	)	
	)	Docket No. 07-0483
Development of net metering standards	)	
required by P.A. 95-0420.	)	

<u>Brief on Exceptions of the People of the State of Illinois</u>

The People of the State of Illinois (the "People"), by and through Lisa Madigan, Attorney General of the State of Illinois, hereby file this Brief on Exceptions pursuant to the ruling issued by the Administrative Law Judge ("ALJ") on February 7, 2008. The purpose of this brief is to seek clarification of the portion of the ALJ's Proposed Order that discusses Section 465.50(b)(1)(i) of the proposed Rule. That Section of the proposed Rule relates to billing for non-residential customers with generators over 40 kW that do not take service under a time of use rate.

The Proposed Order adopts the following language in Section 465.50(b)(1)(i) of the proposed Rule:

> <u>1) Customers taking service under rates other than time of use rates</u>
>
> > <u>i) The electric utility shall determine whether the customer is a net purchaser of electricity or a net seller of electricity during the billing period. If the customer is a net purchaser of electricity during the billing period, the electricity provider shall apply the applicable tariffed or contract rate, as applicable, to the net amount purchased. If the customer is a net seller of electricity, the electricity provider shall compensate the customer at the electricity provider's avoided cost of electricity supply, multiplied by the net amount of electricity sold to the electricity provider. For purposes of calculating the customer's electricity bill, any credits may be used to offset other charges assessed by the electricity provider.</u>

The analysis in the Proposed Order indicates that the ALJ has rejected language proposed for this Section by the Environmental Law & Policy Center ("ELPC") and language proposed by the Office of the Attorney General on behalf of the People. The Proposed Order says that it rejected the language proposed by ELPC and the AG because "[t]his language creates unnecessary confusion and it does not address the situation described by ComEd, where it is not possible to determine what cost is avoided." (Proposed Order at 8.)

While it is true that the language proposed for this Section in ELPC's Initial Comments has been rejected, the proposed Rule attached to the Order includes the following phrase – which was proposed by the Office of the Attorney General: "multiplied by the net amount of electricity sold to the electricity provider." Including this phrase in the proposed Rule avoids confusion, by making the language in this Section consistent with the language in the previous Section of the proposed Rule. This phrase is also completely consistent with ComEd's position.[1]

The text of the Proposed Order should be revised as follows to explain the choice of language in the proposed Rule that is attached to the Proposed Order:

Section 465.50(b)(1)(i) Billing for Non-Residential Customers with Generators Over 40 kW that Take Service Under Rates Other than Time of Use Rates.

Section 465.50(b)(1)(i) provides that, for customers with generators over 40 kW that do not take service under a time of use rate, in any month in which a customer/supplier is a net seller of electricity, an electricity supplier shall compensate a customer at the electricity supplier's avoided cost of electricity, multiplied by the net

[1] The People's Reply Comments did not distinguish between the language proposed by the People and the language proposed by ELPC. However, a re-examination of the language in light of the ALJ's decision to include the People's language in the proposed Rule, highlights important differences between the People's proposed language and the language proposed by ELPC.

amount of electricity sold to the electricity supplier. When a customer/supplier is a net purchaser, the electricity provider must charge customer/supplier the tariffed or contractual rate.

The ~~AG and the~~ ELPC proffered language intended to clarify that the avoided cost rate mentioned in the Rule applies only to excess kilowatt-hour credits that a generating customer receives in any given month, but not to any electricity that is "netted out." The ELPC provides an example whereby if a facility receives 100 units of power from the grid and supplies 120 units to the grid in any given month, the first 100 units would "net out" and the customer/supplier would received an avoided cost rate for the excess 20 units. (ELPC Comments at 4; ~~AG Comments at 2-3~~). The ELPC asserts that charging at the tariffed rate and compensating at the avoided cost rate is not true "net metering." (ELPC Reply Comments at 2).

Staff, however, avers that this recommendation is not workable for the utilities that have tariffs, in which, there are multiple costs that are avoided. It is not clear, Staff continues, which avoided cost should be applied to the excess kilowatt-hours generated. Staff contends that adoption of the language proffered by these entities would, in all likelihood, create new problems, such as unnecessary changes to existing tariffs. (Staff Comments at 3-4).

ComEd maintains that it has two tariffed avoided cost rate structures. Because there is no way to determine when (what time of day) a net metering customer's generation takes place, ComEd cannot determine, with certainty, what cost is avoided. ComEd's solution to this dilemma is to compensate a net metering customer for all generation put onto the grid at rates approximate to the times that the customer's generation took place. It asserts that this generation is excess, meaning that it is only introduced onto the grid if it exceeds a customer's usage at any point in time. (ComEd Reply Comments at 2-3).

The AG offers language that addresses some of the issues raised in the ELPC Comments. (AG Comments at 2-3.) The AG argues that the phrase "multiplied by the net amount of electricity sold to the electricity provider" should be added to make Section 465.50(b)(1)(i) consistent with the language in the previous Section of the proposed Rule. The AG states that this language makes will ensure that the net seller will be compensated at "the electricity provider's avoided cost[ ] for the net amount of electricity sold to the electricity provider." (AG Comments at 3.)

Analysis and Conclusions

We decline to adopt the language offered by ~~the AG and the language offered by~~ the ELPC. This language creates unnecessary confusion and it does not address the situation described by ComEd, where it is not possible to determine what cost is avoided. Moreover, the ELPC offers no evidence establishing that "true" net metering requires electricity providers to bill in the manner it describes. However, we adopt the language offered by the AG, which addresses some of the issues raised in the ELPC Comments, without creating the problem described by Staff and ComEd. The AG's language makes clear that the electricity provider is to apply the appropriate avoided cost for the time period when electricity that exceeds a customer's usage is introduced onto the grid.

WHEREFORE, for the above-stated reasons, the People respectfully request that the rule included in the Proposed Order be modified as described herein.

Respectfully submitted,

The People of the State of Illinois
by LISA MADIGAN, Attorney General

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STATE OF ILLINOIS

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NOTICE OF FILING

PLEASE TAKE NOTICE that on February 26, 2008 the People of the State of Illinois filed the attached ***Brief on Exceptions of the People of the State of Illinois*** in the above-captioned proceeding via e-Docket with the Chief Clerk of the Illinois Commerce Commission at 527 E. Capitol Avenue, Springfield, Illinois 62701.

By: /s/
Kristin Munsch
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CERTIFICATE OF SERVICE

I, Kristin Munsch, hereby certify that the foregoing documents, together with this Notice of Filing and Certificate of Service, were sent to all parties of record listed on the attached service list by e-mail on February 26, 2008. Paper copies will be provided upon request.

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